

LAW OFFICES

SHOOK, HARDY & BACON LLP

GENEVA
HOUSTON
KANSAS CITY
LONDON
MIAMI

HAMILTON SQUARE
600 14TH STREET, N.W., SUITE 800
WASHINGTON, D.C. 20005-2004
TELEPHONE (202) 783-8400 ■ FACSIMILE (202) 783-4211

NEW ORLEANS
OVERLAND PARK
SAN FRANCISCO
TAMPA
WASHINGTON, D.C.

Edwin N. Lavergne
(202) 639-5603
elavergne@shb.com

March 7, 2003

Via Electronic Comment Filing System

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: EX PARTE

Proposal of the Wireless Communications Association International, Inc., the
National ITFS Association and Catholic Television Network for Revisions to
MDS and ITFS Rule, RM-10586

Dear Ms. Dortch:

On Thursday, March 6, 2003, prior to the release of the Commission's meeting agenda, Monsignor Michael J. Dempsey of the Catholic Television Network ("CTN") responded to a telephone call from Paul Margie, Spectrum and International Legal Advisor to Commissioner Michael J. Copps regarding the above-referenced matter. Mr. Margie expressed the Commissioner's concern for ITFS and asked for accurate information regarding the use and leasing of ITFS frequencies in the New York area. Monsignor Dempsey expressed his appreciation for the Commissioner's interest in ITFS, and briefly described the ITFS operation of the Diocese of Brooklyn. Monsignor Dempsey noted that ITFS is one of the few self-supporting services within the Diocese, and made clear that all lease income goes exclusively to the ITFS service. Monsignor Dempsey indicated that he was sure that this was also the case for the members of CTN. Monsignor Dempsey referred Mr. Margie to the attached summary of comments filed in ET Docket No. 00-258 for more information.

As permitted by Section 1.49(f)(1)(i), this *ex parte* submission is being filed via the Commission's Electronic Comment Filing System. Please contact the undersigned if there are any questions in connection with this matter.

Ms. Marlene H. Dortch
March 7, 2003
Page 2

SHOOK, HARDY & BACON LLP

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'E. N. Lavergne', with a long horizontal flourish extending to the right.

Edwin N. Lavergne
Counsel to the Catholic Television Network

cc: Paul Margie

**Excerpts from Comments Filed by the Catholic Television Network
In ET Docket No. 00-258 on February 22, 2001 (Attachments Excluded)**

A. **Archdiocese of Los Angeles.** The Archdiocese of Los Angeles is the largest archdiocese in the United States serving approximately 5.0 million constituents in three Southern California counties covering 8000 square miles. The Archdiocese's school system is comprised of 278 schools, and is one of the three largest school systems in the state of California. The Archdiocese has been using ITFS frequencies since 1967.

Initially, the Archdiocese had four analog ITFS channels, which were used to capacity for educational programming. Over time, as the demand for distance learning increased, the Archdiocese added two additional analog channels. In 1996, with the help of its commercial partner, the Archdiocese's channels were converted to digital operation.

Today, the Archdiocese uses ITFS channels to provide educational programming to over 50,000 students. Teachers have access to a wide variety of courses including science, language arts, math, social studies, religion/values, technology, art, and physical education. Approximately 100 of the Archdiocese's schools are located in inner-city communities, and are struggling financially. These schools have a significant number of students from multi-ethnic backgrounds.

The Archdiocese has learned that integrating technology into the classroom helps to fine-tune the curriculum to meet the individual learning styles of different students. For this reason, the Archdiocese has taken an active role in guiding its schools to develop and implement technology plans that will assist them in providing a better education. ITFS spectrum plays a critical role in these technology plans.

The revenue the Archdiocese receives from leasing channel capacity is the sole source of income for the operation, expansion and improvement of its ITFS system. David G. Moore, Director of Telecommunications Services for the Archdiocese, summarized what would happen without lease revenue as follows:

Without such revenues and the technical assistance from our commercial partner, the Archdiocese would not be able to implement its technology plan, would be forced to eliminate instructional technology from its schools, and the Department of Telecommunications Services will undoubtedly have to close down. Such possibility would have a detrimental impact on the education of our students, the professional development of our teachers, and the achievement of our technology plan for our schools. It would also create a tremendous disparity between our inner city schools and those located in wealthy districts.¹

B. Diocese of Brooklyn. The Diocese of Brooklyn serves approximately 70,000 students and 4.0 million people in Brooklyn and Queens, New York. The Diocese started using ITFS channels in 1965. Over the years, in addition to providing educational services, the Diocese's ITFS network has been instrumental in assisting suicidal persons, families facing eviction, and others facing crisis situations. Today, the Diocese's channels are used to deliver educational, training, and instructional programming to 250 schools, parishes, and other locations in Brooklyn and Queens. The channels are also used to provide medical training to New York area hospitals and nursing homes.

Pursuant to the Commission's new two-way rules,² the Diocese filed applications with the FCC in August 2000, seeking permission to operate its own independent broadband Internet access system. The applications are expected to be granted as early as April 2001. Once constructed, the new broadband system will significantly extend the

¹ Declaration of David G. Moore included as Exhibit A at 2.

² *Report and Order*, MM Docket 97-217, 13 FCC Rcd 19112, 19240 (1998), *recon.*, 14 FCC Rcd 12764 (1999), *further recon.*, 15 FCC Rcd 14566 (2000) ("Two-Way Order").

Diocese's coverage area and ability to offer high-speed Internet access and other data services. It also will enable the Diocese to provide improved high-quality educational services at reduced costs. This is particularly important in the tuition-based Catholic school system where the Diocese has been forced to close over 50 schools, in part, because those schools could not continue providing a quality education at a reasonable cost.

It costs the Diocese over \$1.2 million annually to maintain and operate its ITFS system and to develop the necessary programming. In order to defray these costs, the Diocese has forged a strategic alliance with WorldCom, which leases a portion of the Diocese's channel capacity and pays the Diocese minimum monthly fees. WorldCom also provides ongoing technical and operational services to the Diocese. If these revenues and support services were to disappear, the Diocese would have to curtail dramatically or shut down its ITFS operation altogether.³

C. **Diocese of Rockville Centre.** The Diocese of Rockville Centre is the eighth largest Diocese in the United States, serving Nassau and Suffolk counties in Long Island, New York. The Diocese serves 1.4 million Catholics, which is roughly half the population of Long Island.

The Diocese started using ITFS channels in 1969, when a distance education network was constructed to improve the quality of education for students in elementary and high schools. Today, the Diocese's ITFS channels are used full-time during the day to educate 40,000 students in Nassau and Suffolk counties. The channels are also used to transmit on-demand instructional programming, in-service teacher training, family-value

³ See Declaration of Monsignor Michael J. Dempsey included as Exhibit B.

programming, and other services to schools, hospitals and other institutions. In addition, the channels are used to provide targeted programming to meet the needs of the large Hispanic community in Long Island. The Diocese also uses its ITFS system to educate newer immigrants, guiding them on social service issues, as well as health, housing and legal matters.

It costs approximately \$3.2 million each year to program, maintain and operate the Diocese's ITFS system. A substantial portion of the Diocese's operating budget is derived from spectrum lease payments received from WorldCom. With the assistance of WorldCom, the Diocese is about to commence delivering high-speed Internet access to schools using its ITFS spectrum. This pilot program, which has been planned for three years, will allow teachers to preview educational programs using a video-on-demand Internet-based server. Teachers will be able to use "age appropriate" material at the time best suited for any given lesson, by scheduling specific times when they want programs shown in their schools.

The Diocese's symbiotic relationship with WorldCom is critical to the future success of its educational initiatives. According to Monsignor Thomas Hartman, who is responsible for the Diocese's ITFS system:

The funding we receive from WorldCom must be preserved if we are to improve the technology in our schools....We have worked hard to service the educational needs of the schools in the Diocese of Rockville Centre for the past 32 years. We are on the brink of moving into the next phase of two-way broadband use. We need to have this capability to ensure that all of our students are given the tools of technology to learn and work in the 21st century.⁴

D. Archdiocese of New York. The Archdiocese of New York serves three

⁴ Declaration of Monsignor Thomas Hartman included as Exhibit C at 2-3.

of New York's five boroughs and seven upstate counties covering 4,700 square miles. For 35 years, the Archdiocese has been using ITFS frequencies to deliver instructional programming to its schools. Currently, the Archdiocese provides instructional programming to nearly 47,000 students in more than 100 schools. More than 150 courses are offered each year at all levels.

School programming follows the New York State curriculum in order to provide teachers with an easy way to integrate ITFS programming into their daily lessons. One channel allows teachers to arrange for a particular program to be aired on the date and time of their choice. This feature has created a form of interactivity that further helps teachers plan their lessons.

In August 2000, the Archdiocese, in conjunction with its commercial partner, filed applications for two-way authorization on its ITFS channels. Once these applications are granted, the Archdiocese anticipates bringing to its schools high-speed wireless Internet access and other interactive educational opportunities.

As the importance of ITFS to the Archdiocese's schools has grown, so have the expenses. It costs the Archdiocese nearly \$1.0 million each year to run its ITFS program. For that reason, the Archdiocese must rely on alliances with commercial partners to produce important revenue for its instructional television system.⁵

E. Diocese of San Bernardino. The Diocese of San Bernardino includes the counties of Riverside and San Bernardino covering over 27,000 square miles in Southern California. The Diocese has been using ITFS frequencies since 1984.

Currently, the Diocese provides educational programming to over 25,000 private

⁵ See Declaration of Michael Lavery included as Exhibit D.

and public school students in grades K-12. The Diocese has an extensive curriculum that includes courses in art, languages, math, science, social studies, and religion. In addition, the Diocese provides professional development training to teachers, and courses for adults in areas such as leadership, counseling, continuing education, skills development and health and human services.

Despite the success of its ITFS system, the Diocese has found that using ITFS for traditional one-way instructional video programming to classrooms is no longer sufficient to educate and prepare students for the future. Accordingly, the Diocese is now taking steps, with the assistance of its commercial partners, to upgrade to two-way capability. Classrooms are being upgraded to accommodate two-way interactive capabilities. In addition, new training programs are being implemented to teach instructors how to use interactive technology. Once two-way capabilities are implemented, classrooms will be connected to teachers using digital technology, and students will have access to high-speed Internet connections. Teachers and administrators will benefit as well from two-way interactive training and workshops. The Diocese has the potential of reaching nearly 500,000 K-12 students and 37,000 adult students in San Bernardino and Riverside Counties, and anticipates that a significant number of these schools will request access to its instructional programming once the digital two-way conversion is complete.

A significant portion of Diocese's revenues comes from spectrum leasing fees obtained from WorldCom, Sprint and others. The Diocese depends on these fees to maintain, operate, upgrade, and enhance its ITFS system.⁶

F. Diocese of Orange. The Diocese of Orange serves approximately 2

⁶ See Declaration of Clare Colella included as Exhibit E.

million people, and provides instructional programming to over 18,000 students in 36 schools and parishes throughout Orange County, California. The Diocese started using ITFS channels in 1983.

The Diocese uses ITFS channels to deliver pre-recorded instructional programming to students throughout Orange County in courses such as health, science, math, history and art. The Diocese's programming encompasses every subject for every grade level. In addition, live broadcasts in English, science and teacher professional development are broadcast to K-12 schools for interactive participation using a telephone call-back for audio. In the evenings, when its ITFS frequencies are not being used for educational programming, the Diocese broadcasts inspirational and educational programming aimed at adults. In addition, religious services and other events of importance to the community are broadcast live.

The conversion to two-way broadband is critical to the Diocese for two reasons. First, it will allow the Diocese to offer high-speed Internet access and other data services to its schools. The alternative would mean wiring historical old mission buildings and paying monthly charges to a telephone or cable company for broadband Internet access. This option is costly and would delay the introduction of new educational tools into the Diocese's curriculum. Second, some of the Diocese's schools are located in poor neighborhoods and do not have the necessary funds to provide courses that are critical to a young student's development. Two-way services can be used to create a virtual classroom in which students in schools without such courses can participate in a class with students in schools that do have such courses available. Therefore, while the Diocese has made significant use of its one-way analog ITFS system, it is now planning

to file applications with the FCC to obtain two-way authorization.

It costs approximately \$1.0 million each year to maintain and operate the Diocese's ITFS system. The Diocese leases ITFS channel capacity to WorldCom. In exchange for this capacity, WorldCom pays the Diocese minimum monthly fees and provides technical assistance to its schools. According to Monsignor Lawrence Baird, the Director of Pastoral Communications for the Diocese: "The funds and technical assistance we receive from our commercial partners have significantly improved the quality of our education.... The monthly fee the Diocese receives from WorldCom covers a significant portion of the cost of managing our instructional television program."⁷

G. Archdiocese of San Francisco, Diocese of Oakland, and Diocese of San Jose. The Catholic Telemedia Network provides educational programming to 38,000 students in more than 140 schools located in the counties of San Francisco, Marin, San Mateo, Santa Clara, Contra Costa and Alameda. These counties are served by the Archdiocese of San Francisco, the Diocese of Oakland, and the Diocese of San Jose.

The Catholic Telemedia Network has been using ITFS frequencies since 1970, and was one of the first educational entities in the San Francisco area to use ITFS to transmit to distant classrooms. Today, the Catholic Telemedia Network has a tape library with over 4,000 programs available for educational and professional training. According to Shirley Connolly, the General Manager for Catholic Telemedia Network: "ITFS helps us to cover the 'last mile' into individual classrooms. And now our schools are able to benefit from 'any time, anywhere' resources to enhance learning."⁸

⁷ Declaration of Monsignor Lawrence Baird included as Exhibit F at 2.

⁸ Declaration of Shirley Connolly included as Exhibit G at 1.

Schools served by the Catholic Telemedia Network have a significant number of students from multi-ethnic backgrounds. Many immigrant parents in the Bay Area look to Catholic schools to enable their children to receive a quality education. The schools, in turn, look to the Catholic Telemedia Network to help them meet the individual learning styles of this diverse student population.

The Catholic Telemedia Network also offers videotapes and interactive conferences for adults that vary from teacher training, to life-long learning, and staff education. Programs are also offered to assist individuals with special needs such as seniors, disabled persons, and health care agencies. The Catholic Telemedia Network also participates in annual grief teleconferences hosted by Cokie Roberts of ABC News and produced by the Hospice Foundation of America. These conferences have been delivered over ITFS channels to participating hospitals, Catholic parishes and retirement centers where groups are assembled and facilitators are available.

In 1999, the Catholic Telemedia Network collaborated with Sprint and other ITFS educators in the San Francisco and San Jose areas to implement a plan that would allow Sprint to offer two-way, high-speed data services to consumers and educators. Two-way applications were filed with the FCC in August 2000. Once complete, the two-way conversion will give local educators the capacity to transmit digitally compressed instructional material and improve the speed and quality of their broadcasts over the ITFS/MMDS spectrum. In September 2000, the Catholic Telemedia Network entered into a pilot program with Sprint, which has provided 16 parish schools with two-way high-speed Internet access.

The Catholic Telemedia Network operates on an annual budget of approximately

\$1.0 million. It receives a substantial portion of its funding and other important services from Sprint. Shirley Connolly described the significance of the Catholic Telemedia Network's relationship with Sprint as follows:

Our Archdioceses do not have funding to support the cost of providing technology resources in our schools. Therefore, the revenue and other services CTN receives from leasing transmission capacity to Sprint has become the major source of income for the maintenance, expansion, and improvement of our ITFS services. Without such revenue and on-going technical assistance from Sprint, CTN would not be able to expand its operations and would be forced to eliminate many instructional programs. CTN would be unable to digitize its video library and to expand its distance learning/professional training programs. In the end, the ones most hurt by this loss will be our students.⁹

H. Diocese of Dallas. The Diocese of Dallas started using ITFS channels in 1988, and serves over 600,000 constituents. Currently, the Diocese uses a single ITFS channel to educate 1,500 children and young adults. However, with the help of WorldCom, the Diocese is in the process of expanding its services significantly.

The Diocese broadcasts math, science, language arts and English skills programming, and provides teacher programming guides and lesson plan assistance. The Diocese also has a programming library of over 1,000 instructional videos that can be distributed to any school at virtually any time, thus helping teachers keep student learning on schedule.

Through a strategic alliance with WorldCom, the Diocese obtains funding to cover some of the costs of its ITFS operation. It also obtains vital technical and operational support services from WorldCom. If WorldCom's revenues and support services were to disappear, the Diocese would almost certainly have to curtail dramatically or shut down its ITFS operation. With the help of WorldCom, the Diocese

⁹ Declaration of Shirley Connolly included as Exhibit G at 2.

plans to expand its current service to all of its 37 parochial schools. It also plans to install digital receivers in all of its schools increasing the number of students served by the ITFS system to 8,000.

With 40% of the Diocese made up of Hispanics, the Diocese also plans to begin broadcasting bilingual programming to its schools. This will assist not only students but also parents, allowing them to become more actively involved in their children's education. It will also open the door to English as second language courses for adults.

While the Diocese has made significant use of its ITFS channel, what is of crucial importance now is the conversion of its system to two-way, broadband use. Because of recent rule changes adopted by the FCC, the Diocese has the unique opportunity to provide improved educational services at reduced costs. With the assistance of WorldCom, the Diocese plans on updating its ITFS system by converting to two-way, fixed broadband use. This will give the Diocese the ability to offer schools new services such as high-speed Internet access and other data services.¹⁰

EXCERPTS SUBMITTED BY:

Edwin N. Lavergne
Shook Hardy and Bacon, LLP
202-639-5603 (o)
703-915-9745 (cell)
elavergne@shb.com
elavergne@aol.com

Counsel to the Catholic Television Network

¹⁰ Declaration of Michael McGee included as Exhibit H.